

## ADVISORY OPINION 94-002

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

February 24, 1994

Ms. Sondra R. Laemmle  
Mershon for Sheriff Campaign  
112 Crestwood Avenue  
Louisville, Kentucky 40206

Dear Ms. Laemmle:

Thank you for contacting the Registry. Also, thank you for sending follow-up affidavits to supplement your request. This is a follow-up question to the request you had and the Registry answered in AO 93-029. Therefore, the facts are essentially the same as the previous question and read as follows:

You are treasurer for the Melissa Mershon for Sheriff of Jefferson County 1993 campaign. As treasurer for the Mershon campaign, you would like to award a bonus to Shannon Tivitt, who worked for the Mershon campaign.

Additional facts to this question are that Shannon Tivitt was a paid employee, who contracted with Sondra Laemmle and Melissa Mershon to receive a bonus (\$2,000-\$3,000) if there were any excess funds left in the campaign account after the campaign completed all other business.

Based on your original request, your follow-up request, and your supplementary materials to the follow-up, your question can be stated as follows:

Under Kentucky campaign finance law, may the Melissa Mershon for Sheriff of Jefferson County 1993 campaign award a bonus to Shannon Tivitt, since the campaign has surplus funds left over?

By this opinion, the Registry of Election Finance is not commenting on the enforceability of any agreement between the Mershon campaign and Ms. Tivitt. (In general, see KRS Chapter 371.) However, the best evidence of an agreement between parties is always a written contract. The Registry would suggest that in future campaigns, you execute written employment contracts with paid campaign employees.

In its previous answer to your question, the Registry set forth the following three tests for permissible campaign bonuses paid to campaign employees. One meets the test by adhering to the following conditions:

1. The campaign worker is a paid employee;

2. The campaign worker has an advance agreement with the campaign to award the employee a bonus if certain conditions are met; and
3. The bonus must be reasonable in light of all facts and circumstances including, but not limited to, the employee's contracted salary, the amount of funds raised and spent by the campaign, the amount of excess funds left at the end of the campaign, and the nature and responsibility of the duties of the paid employee.

In order to decide if the bonus you propose is permissible, the Registry would apply this test to the information you have provided. First, according to your information, Ms. Tivitt was a paid campaign employee. Second, according to your affidavit, Ms. Tivitt, you and Ms. Mershon agreed in advance that Ms. Tivitt would receive a bonus if there were excess funds left in the campaign account. These facts meet the first two parts of the test.

The third requirement of the test above has several factors. Your supplemental information indicates that Ms. Tivitt received \$200 per week as salary. The facts also indicate that Ms. Tivitt was a campaign coordinator. Finally, the Mershon campaign's last election finance report indicates there will be approximately \$5,000 surplus when the campaign has paid its remaining bill and that the Mershon campaign spent in excess of \$80,000. Given all these facts and circumstances, a bonus of \$2,000-\$3,000 would not be an unreasonable bonus. A campaign coordinator for this size campaign accepts a great deal of responsibility.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull  
General Counsel

TES/dt